

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

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Bankruptcy Caption: In re Renee Julia Liss

Bankruptcy No. 10-11690

Adversary Caption: N/A

Date of Issuance: July 21, 2022

Judge: Jacqueline P. Cox

Appearance of Counsel:

Attorney for Movant: John H. Redfield
Crane, Simon, Clar & Goodman

Attorney for Respondent: David J. Axelrod
David J. Axelrod & Associates

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In Re:)	Chapter 7
)	
Renee Julia Liss,)	Bankruptcy Case No. 10-11690
)	
Debtor.)	Judge Jacqueline P. Cox
)	

Amended Order on Motion to Avoid Lien (Docket No. 21)

In this matter, the Debtor, Renee Julia Liss (“Debtor”) moved to reopen her bankruptcy case to avoid a judgment lien. Debtor’s Motion to Reopen her Chapter 7 Bankruptcy Case to Avoid a Judgment Lien (the “Motion”), Docket No. 21. On April 29, 2022, following an April 12, 2022 hearing, the court granted the Debtor’s request to reopen her bankruptcy case. Order at Docket No. 30. However, since it was not clear from the transcript of the April 12, 2022 hearing that the court was hearing both the reopening request and the avoidance request, the judgment lienholder, My Generation, Inc. (“Claimant”), was permitted to file a response to the part of Debtor’s Motion seeking lien avoidance; the Debtor was permitted to file a reply thereto; and the avoidance issue was taken under advisement by the court. Docket No. 30.

The Claimant filed a response on May 10, 2022 (Docket No. 31). The Debtor filed a reply on June 9, 2022 (Docket No. 36).

A contested evidentiary hearing on the lien avoidance request was held on June 27, 2022, at which both parties were permitted to introduce the testimony of witnesses, with due notice being given. Order at Docket No. 33. The court advised the parties to be prepared to discuss the following issues at the hearing:

(1) Federal Rule of Bankruptcy Procedure (“Fed. R. Bankr. P.”) 4003 requires objections to property claimed as exempt to be filed within 30 days after the meeting of creditors under 11 U.S.C.

§ 341(a) is concluded or within 30 days after an amendment to the list or supplemental schedules is filed, whichever is later.

(2) In any hearing under Fed. R. Bankr. P. 4003, the objecting party has the burden to prove that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objection(s).

(3) “To deny a debtor an exemption which is based upon a dollar limitation, the objecting party cannot carry its burden of proof by merely impeaching the Debtors’ evaluation. Competent evidence, which affirmatively demonstrates a higher valuation by a preponderance of the evidence, is required.” *In re Shurley*, 163 B.R. 286, 291 (Bankr. W.D. Tex. 1993).

(4) A party objecting to the debtor’s valuation of exempt property has the burden to prove that the property is worth more than the amount claimed by the debtor. LAWRENCE R. AHERN, III & NANCY F. MACLEAN, BANKRUPTCY PROCEDURE MANUAL: FEDERAL RULES OF BANKRUPTCY PROCEDURE ANNOTATED § 4003:11 (2022 ed.).¹

(5) An owner of property may be qualified to give lay testimony as to the property’s value. The basis of the opinion may affect its weight, not its admissibility. Federal Rules of Evidence (“Fed. R. Evid.”) 701, 702; *see also* Illinois Rules of Evidence (“Ill. R. Evid.”) 701, 702, 703, 704.

I. Jurisdiction

The court has jurisdiction to hear this matter under 28 U.S.C. § 1334 and Internal Operating Procedure of the United States District Court for the Northern District of Illinois. This matter is a “core” proceeding under 28 U.S.C. § 157(b)(2)(K), the determination of the validity or extent of a

¹ All references to “BANKRUPTCY PROCEDURE MANUAL” refer to LAWRENCE R. AHERN, III & NANCY F. MACLEAN, BANKRUPTCY PROCEDURE MANUAL: FEDERAL RULES OF BANKRUPTCY PROCEDURE ANNOTATED § 4003:11 (2022 ed.).

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II. Background

Pre-petition, in February 2010, the Claimant received a \$14,698.38 judgment against the Debtor, which it recorded against the Debtor's real property at 737 N. Hayes Ave., Oak Park, IL 60302 (the "subject property" or "homestead property"). Response to Debtor's Motion to Avoid Judgment Lien ("Claimant's Response"), Docket No. 31, ¶¶ 1-2.

In March 2010, the Debtor filed for Chapter 7 bankruptcy; the Claimant was sent notice thereof. BNC Certificate of Service, Docket 9, p. 3. The Claimant was scheduled as a general unsecured creditor. Schedule F, Docket No. 1, p. 21. Per the Debtor's schedules, the subject property was worth \$275,000 and was subject to two mortgages, which totaled \$308,957. Schedules A & D, Docket No. 1, pp. 8, 17.

On Schedule C, the Debtor claimed a \$15,000 homestead exemption in the subject property. Motion, Docket No. 21, ¶ 9; Schedule C, Docket No. 1, p. 14. On the petition date, there was no equity in the homestead property because the liens against it exceeded the property's value. Motion, Docket No. 21, ¶ 10.

In July 2010, the Trustee filed a Report of No Distribution. Docket No. 17. Thereafter, a discharge order was entered (a copy thereof was sent to the Claimant), the case was closed, and the Trustee was discharged. Docket No. 19.

In September 2016, the Claimant revived its judgment and re-recorded its judgment lien on the subject property. Claimant's Response, Docket No. 31, ¶¶ 4-5. In March 2022, the Debtor filed the instant Motion seeking to reopen her bankruptcy case to avoid the Claimant's judgment lien, alleging that she discovered the judgment lien recently when she was attempting to refinance her

property. Motion, Docket No. 21, ¶ 11; Claimant’s Response, Docket No. 31, ¶ 6. The Claimant filed an objection to the Motion. Notice of Objection (“Objection”), Docket No. 23, p. 1. If the Claimant had objected to being scheduled as unsecured, the Debtor might have avoided the lien in 2010.²

On March 15, 2022, the Debtor’s Motion was heard in court. The Court granted Claimant leave to file a response and granted the Debtor leave to file a Reply. The matter was set for a hearing on April 12, 2022.

At the hearing, the Debtor argued she did not know about the lien until recently when she tried to refinance the subject property. The Claimant asserted that Debtor was aware of the lien because she had been served with a Motion for Revival. On April 29, 2022, the court granted the request to reopen, but took the lien avoidance issue under advisement. Order at Docket No. 30. The court allowed the Claimant to file a response to the portion of the Motion seeking lien avoidance and the Debtor to file a Reply thereto. Docket No. 30. A contested evidentiary hearing on the lien avoidance issue was held on Monday June 27, 2022; the Debtor testified.

III. Analysis

This matter concerns Debtor’s motion to avoid the Claimant’s judgment lien (Docket No.

² Pre-petition, on February 9, 2010, the Claimant recorded a \$14,698.38 judgment lien against the Debtor. Motion, Docket No. 21, ¶ 6; Response to Debtor’s Motion to Reopen (“Response”), Docket No. 25, p. 1. The Debtor filed for bankruptcy on March 18, 2010 and scheduled the Claimant as an unsecured creditor with a \$14,698.38 claim for breach of contract. Schedule F, Docket No. 1, p. 21. The Claimant was sent notice of the filing the next day. BNC Certificate of Service, Docket 9, p. 3.

On July 13, 2010, a discharge order was entered and the case was closed three days later. Order of Discharge, Docket No. 19. On July 19, 2010, a Notice of Discharge was mailed to the Claimant and its attorney, Mr. Axelrod. *Id.* at p. 3.

The Claimant previously alleged that, every few months, from around July 2010 to February 2020, it checked the bankruptcy records to see if a Motion to Avoid Claimant’s lien had been filed. Response, Docket No. 25, pp. 1-2.

Clearly the Claimant was aware of the bankruptcy case. However, the Claimant never objected to its debt being scheduled as unsecured. Had that been done sooner the Debtor might have moved to avoid its lien in 2010.

21) and the Claimant's objection thereto (Docket No. 23). Here, the Claimant disputes the Debtor's valuation of the exempt property at 737 N. Hayes Ave., Oak Park, IL 60302.

1. Exempt Property and Lien Avoidance

Under 11 U.S.C. § 522(b), the debtor may exempt certain property from the bankruptcy estate. *See In re Fishman*, 241 B.R. 568, 574 (Bankr. N.D. Ill. 1999) (citing 11 U.S.C. § 522(b)).

Illinois residents who file bankruptcy may claim only the exemptions provided under Illinois law.³ The Illinois exemptions allow “debtors to retain the exempted property for purposes of support and advancing a fresh start.” *See In re Fishman*, 241 B.R. at 574 (citing 11 U.S.C. § 542(a)). As is relevant here, Illinois's homestead exemption permits residents to claim \$15,000 of equity in their residence as exempt from, *inter alia*, “[a]ttachment, judgment, levy, or judgment sale for the payment of his or her debts.” *See* 735 ILCS 5/12-901.

Section 522(f)(1)(A) permits a debtor to “avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled to under [§ 522(b)], if such lien is . . . a judicial lien” 11 U.S.C. § 522(f)(1)(A). “A lien impairs an exemption if the debtor's interest in a property is less than the combined value of the subject lien, all other liens attaching to the property, and the amount of the exemption the debtor could claim if there were no liens on the property.” *In re Kleynerman*, 638 B.R. 111, 117 (Bankr. E.D. Wis. 2022) (citing 11 U.S.C. § 522(f)(2)(A)).

The Debtor claimed a \$15,000 homestead exemption in the subject property. Schedule C,

³ The Bankruptcy Code allows debtors to choose between the exemptions provided by federal law and those provided by state law, unless a state decides to opt out of the federal exemption scheme. *See* 11 U.S.C. § 522(b). Illinois “opted out” of the federal exemption scheme under 11 U.S.C. § 522(b), and thus Illinois residents who file bankruptcy may only claim the exemptions provided by Illinois law. *See* 735 ILCS 5/12-1201; *In re Laredo*, 334 B.R. 401, 409 (Bankr. N.D. Ill. 2005) (citations omitted).

Docket No. 1, p. 14. She argues she was entitled to avoid Claimant's judgment lien over the subject property under § 522(f)(1)(A) because it impaired a homestead exemption to which she was otherwise entitled. The Claimant has not disputed that the judgment lien impairs the exemption.

2. Burden of Proof

"In any hearing under [Fed. R. Bankr. P. 4003], the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections." Fed. R. Bankr. P. 4003(c).

The party objecting to the debtor's valuation of exempt property has the burden to prove that the property is worth more than the amount claimed by the debtor. *See In re Shurley*, 163 B.R. at 289; *see also In re Doyle*, 209 B.R. 897, 904 (Bankr. N.D. Ill. 1997); BANKRUPTCY PROCEDURE MANUAL.

"To deny a debtor an exemption which is based upon a dollar limitation, the objecting party cannot carry its burden of proof by merely impeaching the Debtors' valuation. Competent evidence, which affirmatively demonstrates a higher valuation by a preponderance of the evidence, is required." *In re Shurley*, 163 B.R. at 291.

3. Lay Opinion Testimony

Lay witnesses can testify based on a rational perception of what they observed if it is helpful for the determination of a fact in issue. *See* Fed. R. Evid. 701(a), (b); Ill. R. Evid. 701(a), (b); *People v. Jackson*, 2017 IL App (1st) 142879, ¶ 48, 82 N.E.3d 194, 205 (Ill. App.. 2017) (citations omitted).

Both the federal rules⁴ and the Illinois rules⁵ of evidence (Fed. R. Evid. 701 and Ill. R. Evid. 701) have been interpreted to permit a property owner to testify about the value of his property. The basis of the opinion may affect its weight, not its admissibility. Fed. R. Evid. 701, 702; *see also* Ill. R. Evid. 701, 702, 703, and 704.

Since this is a case under the Bankruptcy Code, the Federal Rules of Evidence apply. *See* Fed. R. Bankr. P. 9017. Fed. R. Evid. 701 requires that a lay witness's opinion be derived from their personal knowledge or experience. *See Sabal Trail Transmission, LLC v. 3.921 Acres of Land in Lake Cnty. Fla.*, 947 F.3d 1362, 1368-69 (11th Cir. 2020) (citing Fed. R. Evid. 701 advisory committee's note to 2000 amendment).⁶ Federal courts have noted that "quintessential" Fed. R. Evid. 701 testimony includes testimony about "the value of one's property." *United States v. Conn.*, 297 F.3d at 554 n.2 (citing *Asplundh Mfg. Div.*, 57 F.3d at 1196-98) (citing Fed. R. Evid. 701)).

Federal courts generally permit a homeowner to testify about the value of their property, but may exclude the testimony where the owner's estimation is "based *solely* on speculative factors." *See Sabal Trail Transmission, LLC*, 947 F.3d at 1368-69 (citations omitted). Where the value of the

⁴ *United States v. Conn.*, 297 F.3d 548 (7th Cir. 2002), 554 n.2 (citing *Asplundh Mfg. Div. v. Benton Harbor Eng'g*, 57 F.3d 1190, 1196-98 (3d Cir.1995) (stating that "quintessential" Fed. R. Evid. 701 testimony includes testimony about "the value of one's property") (citing Fed. R. Evid. 701)); *Cunningham v. Masterwear Corp.*, 569 F.3d 673, 676 (7th Cir. 2009) ("[T]he federal rules, like Indiana's rules, have been interpreted to permit a property owner to testify about the value of his property.") (citations omitted).

⁵ *See Dep't of Transp. v. Harper*, 64 Ill. App. 3d 732, 735 (Ill. App. 1978) (holding that a property owner is generally qualified to give lay testimony as to their property's value merely by virtue of ownership, unless they have no familiarity with the facts which give the property value) (citations omitted); *Enbridge Pipeline (Ill.), LLC v. Hoke*, 2017 IL App (4th) 150544, ¶ 100, 80 N.E.3d 807, 826 (Ill. App. 2017) (citations omitted); *Mandell v. Mandell*, 2017 IL App (1st) 151477-U, ¶¶ 45, 53 (Ill. App. 2017) (citing Ill. R. Evid. 701; *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 206 (2011)).

⁶ Fed. R. Evid. 701 ("If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of [Fed. R. Evid.] 702.")

Debtor's property is at "the heart of [a] dispute," bankruptcy courts have permitted property owners to testify about the value of their property. *See In re SSK Partners LLC*, No. 11-BK-49091, 2012 WL 4929019, at *2, *5 (Bankr. N.D. Ill. Oct. 12, 2012) (citing *Cunningham*, 569 F.3d at 676). In *In re SSK Partners, LLC*, a creditor moved to lift the automatic stay, asking the court to permit a state court-appointed receiver to resume control of the Debtor's real property (single-asset real estate) and allow the creditor to continue a pending foreclosure action against the Debtor. *Id.* at *1. The court permitted an individual who was both a member and a manager of the Debtor to testify about the value of the Debtor's real property, reasoning that the federal rules permit a property owner to testify about the value of their property. *See id.* at *2, *5 (citing *Cunningham*, 569 F.3d at 676). The court also allowed a fact witness to clarify how the individual reached his valuation. *See id.*

Here, the Debtor asserts the property was worth \$275,000, as listed on her Schedule A; the Claimant disputes this valuation, arguing the Debtor lacks sufficient evidence to support it. Reply of Debtor to Response of My Generation, Inc. to Avoid Judgment Lien ("Debtor's Reply"), Docket No. 36, pp. 1-2; Claimant's Response, Docket No. 31, ¶ 14; Schedule A, Docket No. 1, p. 8.

The Debtor argues she based her valuation of the subject property on the value of a similar bungalow that her neighbor sold and on internet valuations around the time of the Petition Date. Debtor's Reply, Docket No. 36, p. 1; June 27, 2022 Contested Hr'g Tr. at 7:22–25, 8:1–4.⁷ To support her valuation, she submitted four exhibits: (1) Bankruptcy Schedules A, B, C, and D; (2) a loan payment log of Provident Funding from the Debtor's First Mortgage dated December 1, 2009

⁷ In her reply, the Debtor alleges her valuation in Schedule A was based on the value of a similar bungalow that her neighbor sold for \$280,000. Debtor's Reply, Docket No. 36, p. 1. No testimony was given about this bungalow. However, the Debtor did testify about a different comparable, 721 Hayes, which sold on her block in March 2009 for \$199,000. June 27, 2022 Contested Hr'g Tr. at 7:12–25.

to May 10, 2010; (3) a statement from PNC Bank dated March 25, 2011; and (4) an appraisal of the subject property dated January 12, 2022 for \$330,000. *See* Debtor's Witness and Exhibit Lists ("Witness & Ex. List"), Docket No. 34, p. 1; Ex's. 1-4, Docket No. 34 (part 2), pp. 1-38.⁸

My Generation, Inc. argues the Debtor's Motion to Avoid Judicial lien should be denied because the Debtor's claims regarding the valuation and the balances due on the mortgages on the petition date were only supported by her Chapter 7 schedules, not by independent documentation. *See* Claimant's Response, Docket No. 31, ¶¶ 8-14.⁹

The Debtor testified at the hearing on June 27, 2022 and was subject to cross-examination by the Claimant's attorney, David J. Axelrod. The Debtor testified that she has lived in the subject property (737 N. Hayes) for almost twenty-six (26) years; the valuation of \$275,000 was based on the research of her former bankruptcy attorney, Glenn Betancourt; she tracked the value of the property on Zillow; and looked to the sale of another property on her block, located at 721 N. Hayes Ave, which sold for \$199,000. June 27, 2022 Contested Hr'g Tr. at 4:4–5, 7:16–25, 8:1–4.

The Debtor testified that she brought the subject property on July 16, 1996. She testified that in July 2005, she and a friend bought property at 744 N. Hayes, which was across the street from the subject property; both properties were single story bungalows and were similar in size, although 744 N. Hayes was slightly smaller. June 27, 2022 Contested Hr'g Tr. at 5:13–25, 6:1–9.

In 2005, the Debtor took out a home equity loan with PNC Bank, on which she currently

⁸ At the hearing, after Debtor testified and was cross-examined, the Court admitted the exhibits into evidence.

⁹ The Claimant did not call any witnesses to testify or submit any exhibits.

owes \$80,000. June 27, 2022 Contested Hr’g Tr. at 10:1–12.¹⁰ She testified that she was employed as a graphic artist from 2005 until around June 2007, when she purchased My Generation, Inc. June 27, 2022 Contested Hr’g Tr. at 12:3–13, 6:11–22. She began working for My Gen Boutiques thereafter, which sold items for young girls. June 27, 2022 Contested Hr’g Tr. at 12:14–25, 13:1–2. She was the owner and operator of that business and stopped working there when she filed for bankruptcy in March 2010. June 27, 2022 Contested Hr’g Tr. at 13:6–14.

My Generation, Inc. went out of business in February 2010 due to the 2008 recession, but the Debtor noticed issues in late 2007 because of a decline in sales. June 27, 2022 Contested Hr’g Tr. at 16:21–23, 17:1–6. She testified that in October 2011, the 744 N. Hayes property, across the street from the subject property, was sold for \$165,000 in a foreclosure sale; she could not rent or sell it during the recession while waiting for the value to increase. June 27, 2022 Contested Hr’g Tr. at 5–7.

On cross examination, the Debtor stated that she does not have a real estate broker’s license, a home remodeling license, or a mortgage lender’s license. June 27, 2022 Contested Hr’g Tr. at 16:7–13.

During the hearing, the court overruled the Claimant’s objection that the Debtor could not testify about the value of the subject property without specialized knowledge. June 27, 2022 Contested Hr’g Tr. at 17:16–24, 18:14–20, 23:6–7. The court reasoned that owners of property may generally give lay testimony about the value of their property, and whether they are testifying as an expert goes to weight, not admissibility. June 27, 2022 Contested Hr’g Tr. at 23:8–11. Here, the fact that the Debtor testified about how long she held the property and the impact of market forces

¹⁰ The Debtor submitted a statement a statement from PNC Bank dated March 25, 2011. *See* Exhibit 3, Docket No. 34 (part 2), p. 10.

as well as the recession showed she had a firm enough grasp on the value of property to testify about it. June 27, 2022 Contested Hr’g Tr. at 23:12–22.

The court finds that the Debtor’s testimony that she has owned the subject property for twenty-six (26) years; that she compared the property’s value to the sale price of other properties on her block around the petition date; and that the recession negatively affected property values during this time shows she based her opinion on the value of her property on personal knowledge and her experience and thus is qualified to give lay opinion testimony. *See Sabal Trail Transmission, LLC*, 947 F.3d at 1368-69 (citing Fed. R. Evid. 701 advisory committee’s note to 2000 amendment); *United States v. Conn.*, 297 F.3d at 554 n.2 (citing *Asplundh Mfg. Div.*, 57 F.3d at 1196-98) (citing Fed. R. Evid. 701)).

The court notes that federal courts generally permit homeowners to testify about the value of their property. For the reasons noted above, this testimony should not be excluded because it is not “based *solely* on speculative factors.” *See Sabal Trail Transmission, LLC*, 947 F.3d at 1368-69 (citations omitted).

Likewise, similar to *In re SSK Partners, LLC*, the crux of this dispute involves the value of the Debtor’s real property. 2012 WL 4929019, at *2, *5. Here, the Debtor’s ability to avoid the fixing of the Claimant’s judicial lien requires that the lien impair the Debtor’s homestead exemption, which, in turn, requires the value of the Debtor’s property interest to be worth less than the combined value of the subject lien, all other liens on the property, and the amount of the claimed exemption. *See In re Kleynerman*, 638 B.R. at 117(citing 11 U.S.C. § 522(f)(2)(A)). The Claimant’s objection to the Debtor’s claim of exempt property rests on its assertion that the Debtor lacks sufficient evidence for her valuation of the property. *See Claimant’s Response*, Docket No.

31, ¶¶ 8-14. To help resolve this dispute, it was proper to permit the Debtor to give opinion testimony about the value of her property because her opinion was based on her personal knowledge (e.g., as the property owner) and experience (e.g., selling other property in the area). The Claimant had the opportunity to call his own witnesses to support a competing valuation, but failed to do so.

Here, the court finds that the Claimant fails to meet its burden to prove that the Debtor's exemption is not properly claimed under Fed. R. Bankr. P. 4003(c). The Claimant has not shown that the property is worth more than the Debtor claims. *In re Shurley*, 163 B.R. at 289; *In re Doyle*, 209 B.R. at 904; *see also* Fed. R. Bankr. P. 4003(c). The Claimant was required to bring in "competent evidence" that affirmatively showed "a higher valuation by a preponderance of the evidence." *In re Shurley*, 163 B.R. at 291. The Claimant failed to submit any exhibits or call any witnesses to testify regarding the value of the property. Instead, it merely argued the Debtor's motion should be denied because she did not provide independent documentation to support her valuation or the balances due on the mortgages at the time of filing. *See* Claimant's Reply, Docket No. 31, ¶ 14. This will not suffice.

Although such a rule is not currently in effect, the Advisory Committee on Bankruptcy Rules would be well-advised to promulgate a Rule requiring creditors who file a judgment in a non-bankruptcy system that creates a lien to file a copy of that filing on the bankruptcy case docket regardless of whether said creditors have filed a proof of claim in the bankruptcy case.

IV. Conclusion

Since the Claimant, as the objecting party, failed to meet its burden under Fed. R. Bankr. P. 4003(c), the Court finds that it cannot prove the Debtor's exemption is not properly claimed and that the property is worth more than the Debtor claims. As a result, the court hereby overrules the

Claimant's Objection (Docket No. 23) and grants the Debtor's request to avoid the judgment lien of My Generation, Inc. (Docket No. 21).

My Generation, Inc.'s judgment lien, in the amount of \$14,698.38, is hereby avoided under 11 U.S.C. § 522(f)(1)(A) because it impairs the debtor's homestead exemption in the subject property. *See In re Kleynerman*, 638 B.R. at 117 (citations omitted).

Date: July 21, 2022

ENTER: _____
Jacqueline P. Cox
United States Bankruptcy Judge